

Commonwealth of Virginia
Department of Social Services



ONS TRANSMITTAL NUMBER 05-06

Date: December 29, 2005

Subject: Information VDSS January 1, 2006 Implementation of New Legal Presence Requirement

To: ONS Resettlement Provider Directors

From: Kathy A. Cooper
Virginia State Refugee Coordinator
Manager, Virginia Office of Newcomer Services

Contact: Penny Boyd at penny.boyd@dss.virginia.gov or 804-726-7933

The 2005 General Assembly passed legislation requiring applicants for TANF, Medicaid, Auxiliary Grants, and General Relief to provide proof of legal presence or citizenship and setting forth exceptions to this rule.

The new law is effective January 1, 2006. In December, the Virginia Department of Social Services issued revisions to its TANF and Medicaid manuals and sent an informational Broadcast to local departments of social services.

The new law does not change eligibility requirements for refugees, asylees, entrants, victims of trafficking, or Amerasians applying for TANF or Medicaid. Refugees, asylees, entrants, victims of trafficking, and Amerasians present the same documents currently required to show qualified alien status. This ONS Transmittal is sent for your information. No action is required.

These new procedures do not affect refugee application for TANF and Medicaid; however, should a refugee experience any difficulty in the application process as a result of this new requirement, please contact Penny Boyd at 804-726-7933 or penny.boyd@dss.virginia.gov.

Attached for your information is new law and Virginia Department of Social Services Broadcast 3520.

BROADCAST 3520

DATE: Dec. 12, 2005

TO: Local directors, local eligibility staff and field staff

FROM: Stephanie Sivert, Acting Program Manager, Medical Assistance Unit
Mark Golden, Program Manager, TANF Unit

SUBJECT: Implementation of Legal Presence Requirement Jan. 1, 2006

CONTACT: [Medical Assistance Program and TANF Specialists](#)

Effective Jan. 1, 2006, [Section 63.2-503.1](#) of the Code of Virginia requires most applicants for or recipients of public assistance who are age 19 or older to provide proof of citizenship or legal presence in the U.S. This law impacts the Temporary Assistance for Needy Families (TANF), General Relief (GR), Auxiliary Grants (AG) and Medicaid programs. The law does not apply to the Food Stamp, State and Local Hospitalization (SLH) or Family Access to Medical Insurance Security Plan (FAMIS) programs.

Applicants or recipients age 19 or older for whom TANF, GR, AG or Medicaid is requested must prove their citizenship or legal presence. An individual who is applying on behalf of another and is not requesting assistance for himself is not subject to the legal presence requirement.

For the purposes of Medicaid eligibility, [Section 32.1-325.03](#) of the Code of Virginia specifically exempts individuals who, on June 30, 1997, were Medicaid eligible and were residing in long-term care facilities or participating in home and community-based waivers, and who continue to maintain that status (eligible for Medicaid and reside in long-term care facilities or participate in home and community-based waivers) from the legal presence requirement. In addition, undocumented or illegal aliens applying for Medicaid payment for emergency services are not subject to the legal presence eligibility requirement. The policy for determining eligibility for Medicaid coverage of emergency services only contained in subchapter [M0220](#) of the Medicaid Eligibility Manual has not changed.

Documents That Demonstrate Citizenship or Legal Presence

Applicants must demonstrate either citizenship or legal presence in the United States (U.S). An applicant may demonstrate citizenship by presenting a birth certificate or a U.S. passport. An applicant may demonstrate legal presence by presenting one of the following documents:

- a valid Social Security Number (SSN) verified by the Social Security Administration;
- a U.S. non-immigrant visa;
- a pending or approved application for legal asylum;
- a refugee or temporary protected status document; or
- a pending application for an adjustment of residence status.

For most applicants and recipients, this requirement will be met when the eligibility worker verifies the SSN through the Social Security Administration. A copy of the document used to verify citizenship or legal presence must be placed in the case record.

Inability to Provide Proof of Citizenship or Legal Presence

An applicant who is unable to provide documentation that he is a citizen or legally present at the time of application is required to sign, under oath, an affidavit attesting that he is a U.S. citizen or legally present in the United States. This will meet the requirement for proof of legal presence for either:

- a period of 90 days or until it is determined that he is not legally present in the U.S., whichever is earlier; or
- indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with federal or state law. Such extension shall terminate upon the applicant's receipt of a birth certificate or determination that a birth certificate does not exist because the applicant is not a U.S. citizen.

For the purposes of Medicaid eligibility, the attached Affidavit of United States Citizenship or Legal Presence in the United States will allow the individual to temporarily meet the legal presence requirement. English and Spanish versions of the affidavit form are also available on the VDSS Local Agency Intranet at <http://localagency.dss.virginia.gov/divisions/bp/me/forms/general.cgi>. The form will be posted in additional languages as soon as possible. Agencies may follow the guidance found in [Broadcast 3328](#) for utilizing translation services until the translated forms are available.

Section 63.2-502 of the Code of Virginia provides that a person who knowingly makes false application for public assistance shall be guilty of perjury. The Application for Benefits requires the applicant to affirm that he has given correct information under penalty of perjury. For the TANF, GR, and AG programs, the Application for Benefits is acceptable affirmation of legal presence

Providing proof of legal presence or submitting a signed affidavit meets the legal presence eligibility requirement for TANF, GR, AG, and Medicaid. To be eligible for these programs, however, the individual must meet all other state and/or federal eligibility requirements.

Submission of the affidavit without proof of application for an SSN as required by [M0130.200.D](#) does NOT meet the SSN requirement for TANF or Medicaid. As a reminder, when the applicant provides proof of application for an SSN, the appropriate enrollment system must be updated with the verified SSN provided by the applicant/recipient upon receipt.

Renewals

Recipients of TANF, GR, AG, or Medicaid who were determined eligible prior to Jan. 1, 2006 must meet the citizenship or legal presence requirement at the time of renewal of their eligibility for these programs. Copies of documents already contained in the case record that show citizenship or legal presence satisfy the requirement. These documents include copies of a U.S. passport, birth certificate, State Verification Exchange System (SVES) report, or immigration status document verified by the Systematic Alien Verification for Entitlements (SAVE). If the case record does not contain one of these documents, the eligibility worker should obtain a SVES report showing the valid SSN if possible. The worker must request documentation of citizenship or legal presence from the recipient only when unable to obtain it using information contained in the case record.

Policy on the Citizenship/Legal Presence requirement will be in the next Medicaid, TANF and GR transmittals.

Reminder: If any individual provides proof of application for an SSN to meet the SSN eligibility requirement, the appropriate system(s) must be updated to reflect the verified SSN upon receipt.

If you have questions about any information in this broadcast, please contact your Medical Assistance or TANF Program Specialist.



COMMONWEALTH of VIRGINIA

AFFIDAVIT OF UNITED STATES CITIZENSHIP OR LEGAL PRESENCE IN THE UNITED STATES

I understand that providing proof of my United States citizenship or legal presence in the United States is a requirement for receipt of Virginia Medicaid benefits. I declare, under penalty of perjury, that I am a United States citizen or am legally present in the United States.

I understand that if I give false information regarding my United States citizenship or legal presence in the United States, my Virginia Medicaid coverage may be denied or ended and I could be prosecuted for perjury, larceny and/or fraud.

Print Name _____

Signature _____

Date _____

Residence Address _____

Telephone _____

City _____ State _____ ZIP _____

[previous](#) | [next](#)

§ 63.2-503.1. (Effective January 1, 2006) Legal presence required for public assistance; exceptions; proof of legal presence.

A. In addition to meeting the existing eligibility requirements of the benefits applied for, no person who is not a United States Citizen or legally present in the United States shall receive state or local public assistance pursuant to this subtitle, except for state or local public assistance that is mandated by Federal Law pursuant to 8 U.S.C. § 1621.

B. In addition to providing proof of other eligibility requirements, at the time of application for any state or local public benefit, an applicant who is 19 years of age or older shall provide affirmative proof that he is a U.S. citizen or is legally present in the United States. Such affirmative proof shall consist of documentary evidence as required pursuant to § [46.2-328.1](#) or a social security number as verified by the Social Security Administration. An applicant who is under the age of 19 years shall not be required to provide such affirmative proof; however, such person upon reaching the age of 19 years shall comply with the provisions of this section.

An applicant who cannot provide proof that he is a citizen or legally present at the time of application shall sign an affidavit under oath attesting that he is a U.S. citizen or legally present in the United States in order to receive temporary benefits as provided in this section. The affidavit shall be on or consistent with forms prepared by the Commissioner, and shall be subject to and include an explanation of the provisions of § [63.2-502](#) relating to penalties for knowingly providing false information on a public document. The agency shall report in writing to the appropriate attorney for the Commonwealth those who are determined to have falsely attested to lawful presence.

Once an applicant has provided the sworn affidavit required by this subsection, he shall be eligible to receive temporary benefits for either:

1. Ninety days or until such time that it is determined that he is not legally present in the United States, whichever is earlier, or
2. Indefinitely if the applicant provides a copy of a completed application for a birth certificate that has been filed and is pending and being actively pursued in accordance with § [32.1-259](#) or [32.1-260](#) or any substantially similar law of another state, the District of Columbia, or United States territory or commonwealth. Such extension shall terminate upon the applicant's receipt of a birth certificate or a determination that a birth certificate does not exist because the applicant is not a United States citizen.

C. The provisions of subsection B shall not apply to persons applying for benefits exempted by subsection A of this section and subsection A of § [32.1-325.03](#).

(2005, cc. 867, 876.)

[previous](#) | [next](#) | [new search](#) | [table of contents](#) | [home](#)